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TO RUEHC/SECSTATE WASHDC 7899
INFO RUEHZI/WHA IM POSTS COLLECTIVE
RUCPDO/DEPT OF COMMERCE

UNCLAS SECTION 01 OF 02 CARACAS 000366

SIPDIS

SENSITIVE
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STATE FOR EB/IPE CLACROSSE, DEPT PLS PASS TO USTR
JCHOE-GROVES, DOC JBOGER, DOC PLS PASS TO USPTO JURBAN AND
LOC STEPP

E.O. 12958: N/A

TAGS: [KIPR](#) [VE](#)

SUBJECT: 2007 SPECIAL 301 RECOMMENDATION: KEEP VENEZUELA
ON PRIORITY WATCH LIST

REF: A. STATE 7944

[B](#). 06 CARACAS 486

[C](#). 05 CARACAS 596

[1](#). Summary: (SBU) The BRV's protection and enforcement of IPR continues to deteriorate. The market for legitimate music CDs is eclipsed by piracy, with piracy rates for CDs, DVDs, and business software hovering around 80 percent. SAPI, the agency that oversees IPR enforcement and issues patents, has not issued a single patent since 2004. Venezuela's customs and tax agency, SENIAT, has achieved some success in its anti-piracy campaigns and seizure of contraband, but overall enforcement of IPR legislation remains ineffective. The implementation of proposed legal changes would further weaken IPR protection. Based on the BRV's antipathy to IPR, weak enforcement and possible legal changes to further strip away IPR protection, Post recommends that Venezuela remain on the Special 301 Priority Watch List for 2007. End Summary.

The Pharmaceutical Industry

[2](#). (SBU) The international pharmaceutical industry continues to see a weakening of IPR protection in Venezuela. Despite Venezuela having the highest per-capita pharmaceutical consumption in Latin America, and being the third largest market in the region, SAPI, the Autonomous Intellectual Property Service (the country's primary IPR authority), has not issued a patent to an imported pharmaceutical product since 2003, and has not issued a patent in any sector since [2](#)2004. SAPI has continued to receive an average of over 500 patent application submissions per year. Since 2002, the BRV has failed to protect pharmaceutical testing and other confidential data for product submissions that have not yet

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received patent protection. The BRV does not provide linkage between patent and sanitary registration. Counterfeiters can receive sanitary registration approval in the absence of a patent -- equivalent to marketing approval for a counterfeit product.

[3](#). (SBU) The legal framework in Venezuela for pharmaceutical protection is ambiguous after the BRV withdrew from the CAN (Andean Community) in April 2006. Venezuelan law had incorporated over 650 legal decisions from the Andean Community into domestic law, including Decision 486, a pronouncement on protection of intellectual property rights. The most recent domestic intellectual property legislation in Venezuela dates from 1955 and does not provide for patent

protection. Venezuelan courts have, de facto, continued to apply Decision 486, though they have offered no assurances that they will continue to do so.

Recorded Media and Software

¶4. (SBU) The market for legitimate CDs and DVDs continues to decline. According to a Post IPR source, there are approximately 1.8 million music CDs sold annually in Venezuela and 80 million virgin discs imported. This would indicate that Venezuela is not solely a distribution source, but a mass production center for counterfeit products. Industry estimates the piracy rate for music CDs at 85 percent, a two percent increase from 2005. The National Film Law, passed in August 2005, requires mandatory registration of all films, which could lead to unauthorized releases of confidential information and contribute to piracy.

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¶5. (SBU) The piracy rate for business software in 2006 is 84 percent, according to International Intellectual Property Alliance statistics -- a 6 percent increase from 2005. U.S. software companies have repeatedly come under attack from the BRV as exemplars of what President Chavez referred to as the "neo-liberal" trap of IPR. In 2004, the BRV passed legislation that mandates the use of open source software throughout the public sector. While not necessarily a violation of IPR in and of itself, the software industry has concerns about a lack of transparency in its implementation and favoritism shown to certain vendors.

IPR Enforcement

¶6. (SBU) IPR enforcement in Venezuela continues to be weak. Enforcement problems derive for the most part from a lengthy legal process, unprepared judges, as well as lack of

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resources for investigation and prosecution. A single special prosecutor is responsible for IPR issues. Consequently, investigations are severely backlogged. Under current Venezuelan law, most IPR enforcement actions can only take place as a result of a complaint by the rights holder. In addition, the complainant is responsible for the cost of storage of allegedly illicit goods during the investigation and trial. A loophole in the law only permits actions against copyright violators operating at a fixed location, effectively barring prosecution of street vendors.

¶7. (SBU) SENIAT remains the one bright spot in a dismal landscape of respect for IPR with noteworthy efforts to fight piracy in conjunction with its "zero tax evasion" mission. SENIAT proposed an Anti-Piracy Law in 2006. We do not expect this proposal to be signed into law. In February 2007, SENIAT reportedly destroyed 450,000 pirated CDs and 280,000 pirated DVDs. SENIAT superintendent Jose Gregorio Vielma Mora has called on the BRV to provide the legislative framework to protect author's rights, adding that enforcement efforts to stamp out counterfeiting requires enhanced cooperation of SENIAT, local police, and the national guard. Coordinated efforts, to date, have been minimal.

Legal Changes on the Horizon

¶8. (SBU) Proposed legal changes, if implemented, would result in further weakening of the IPR regime in Venezuela. The National Assembly has delegated to President Chavez, for a period of 18 months, the power to issue decrees carrying the force of law. Both the pharmaceutical and recording industries expressed their concern to us over potential abuse of this power to push through legislation that would further weaken the IPR regime. In particular, there is concern that

Chavez may sign into law a controversial copyright bill dating from 2004, which apparently was no longer on the legislative agenda. The bill would violate a reported 31 of Venezuela's bilateral and multilateral IPR treaty obligations including the Bern Convention and TRIPs. It would reduce the protection period for copyrights from 60 to 50 years and would allow the BRV to expropriate artistic rights for the public sector. Venezuela has not yet ratified the WIPO Copyright Treaty or the WIPO Performances and Phonograms Treaty.

Comment

19. (SBU) Venezuela continues to be an unfriendly environment for intellectual property rights. Pirated and counterfeit products abound, and piracy rates are climbing. Despite SENIAT's efforts, overall enforcement remains weak. The BRV has dedicated few resources to investigating and prosecuting IPR crimes. The legal regime for IPR protection is in a state of uncertainty after Venezuela's withdrawal from the CAN. IPR protection will likely deteriorate in the upcoming year as Chavez may push through controversial copyright legislation that would further undermine IPR protection and violate Venezuela's treaty obligations. Post recommends keeping Venezuela on the Special 301 Priority Watch List for 2007.

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